

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

IN RE:)	03-10383/Chapter 12 Proceeding
)	
ROBERT L. HERRON and)	
DONNA L. HERRON d/b/a)	MOTION TO MODIFY CHAPTER 12 PLAN
Piney Hill Dairy,)	
)	
Debtors.)	

The debtors move the Court, allege and say:

1. The debtors filed voluntary Chapter 12 on April 3, 2003 with plan confirmed by order entered on February 3, 2004.
2. On August 20, 2004, the Court entered an order allowing the debtors to sell real property to Bruce E. Johnson for a net sales price of \$137,800.00. From the sale price approximately \$7,800.00 will be paid to administrative expenses and approximately \$130,000.00, subject to capital gain taxes and \$5,000.00 payment to Class 8, will be available to the debtors and Carolina Farm Credit, both subject to regular closing costs and capital gains taxes of approximately \$15,000.00. There was no realtor involved in the sale transaction.
3. With the receipt of approximately \$100,000.00, the claim of Carolina Farm Credit will be reduced to approximately \$50,000.00. During the Chapter 12 proceeding, prior to confirmation, the debtors previously sold a tract of real property and paid Carolina Farm Credit approximately \$220,000.00 on its secured indebtedness.
4. A modification to the debtors' confirmed Chapter 12 plan, Class 3, the Carolina Farm Credit secured indebtedness, would be appropriate to adjust the plan under Section 1229(a)(3) and allow the debtors to successfully operate its farm under Chapter 12. Additionally, a payment to Class 8 of \$5,000.00 from the sale proceeds would be appropriate for the year 2004 as well as providing operating expenses of \$10,000.00 to the debtors for 2004.
5. The debtors' post-sale indebtedness to Carolina Farm Credit should be reduced to approximately \$50,000.00 secured by the debtors' remaining real and personal property worth substantially in excess of \$50,000.00. Carolina Farm Credit remains fully secured. A 20 year amortization (10 year balloon) at 8.45% would result in a monthly payment of approximately \$433.92 or an annual payment of \$6,225.00 for the first year, then \$6,513.75 the second year with an amortized amount each year thereafter with a balance due of approximately \$25,000.00 in ten (10) years.
6. A modification under 11 U.S.C. Section 1229 is appropriate for the best interest of the Chapter 12 estate, the creditors, the Chapter 12 plan and the debtors. By

paying Carolina Farm Credit \$320,000.00 on its \$370,000.00 indebtedness since the debtors' filing of Chapter 12 on April 3, 2003, the debtors' farm operation and potential income have been reduced, justifying a reduction in appropriate secured payment to Carolina Farm Credit.

THEREFORE, the debtors respectfully move the Court for an order as follows:

- 1. To modify the debtors' Chapter 12 plan to change the payments to Carolina Farm Credit on its secured indebtedness as indicated above.**
- 2. To provide for distribution from the net sale proceeds of approximately \$130,000.00 (after administrative cost of \$7,800.00 is paid) for Carolina Farm Credit \$100,000.00, for unsecured creditors \$5,000.00, for taxes \$15,000.00 and for operation income of approximately \$10,000.00.**
- 3. For other appropriate relief.**

This the 2nd day of September, 2004.

/s/ David G. Gray

**David G. Gray, Attorney for Debtors
N. C. State Bar No. 1733**

**WESTALL, GRAY, CONNOLLY & DAVIS, P.A.
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FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

IN RE:)	03-10383/Chapter 12 Proceeding
)	
ROBERT L. HERRON and)	
DONNA L. HERRON d/b/a)	NOTICE OF HEARING
Piney Hill Dairy,)	
)	
Debtors.)	

**TO: CAROLINA FARM CREDIT, ACA
% Daniel C. Bruton, Attorney of Record
P. O. Box 21029
Winston-Salem, North Carolina 27120-1029**

**ROBERTS & STEVENS, P.A., TRUSTEE
% Marjorie R. Mann, Attorney
P. O. Box 7647
Asheville, North Carolina 28802**

TAKE NOTICE that the debtors have filed motion to modify their Chapter 12 plan; a copy of the motion accompanies this notice.

TAKE FURTHER NOTICE that hearing on the motion will be held before the Bankruptcy Judge Presiding on Tuesday, **SEPTEMBER 21, 2004 at 9:30 a.m.** or thereafter as called for hearing in the first floor courtroom of the United States Courthouse, 100 Otis Street, Asheville, North Carolina.

This the 2nd day of September, 2004.

/s/ David G. Gray

**David G. Gray, Attorney for Debtors
N. C. State Bar No. 1733**

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The undersigned certifies that copy of the foregoing has this day been served by first class mail in a properly addressed envelope with adequate postage affixed on each of the above named parties.

This the 3rd day of September, 2004.

/s/ David G. Gray

David G. Gray, Attorney